IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Applicant:		)	
	RIORDAN ET AL.	)	
		)	Examiner G. Duong
Appl. No.	10/083,876	)	
		)	Art Unit 2155
Confirm. No.	4745	)	
		)	Atty. Docket No. CS11457
Filed:	27 February 2002	)	

Title: "Software Content Downloading Methods in radio Communication Networks"

PRE-APPEAL BRIEF REVIEW REQUEST

Assistant Commissioner for Patents
Alexandria, Virginia 22313

Sir:

Review Request, Claims Pending

The application stands subject to a final Office action mailed on 20 November 2007. The claims have not since been amended. Pre-appeal brief review is respectfully requested. A notice of appeal has been filed concurrently. Claims 1-2, 4-5, 8-11 and 13-17 are pending.

Arguments re: Metz, Yong & Levitan

Rejection Summary

RIORDAN ET AL.
"Software Content Downloading Methods
in radio Communication Networks"
Atty. Docket No. CS11457

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Confirm. No. 4745
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Art Unit 2155

Claims 1 and 8 stand rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 65,978,855 (Metz) in view of U.S. Patent No. 5,541,919 (Yong) and U.S. Patent No. 6,965,913 (Levitan). The Examiner concedes that the combination of Metz and Yong fails to disclose "... multiplexing ..." a plurality of different common software content and "... dynamically adjusting the plurality of different common software content multiplexed on the shared communication channel."

Discussion of Claim 1

The Examiner's reliance on Levitan to meet the admitted deficiencies of Metz and Yong is misplaced. At col. 7: 8-28, Levitan discusses continuing the transmission of an unscheduled file for a number of days based on the number of users requesting the file. In other words, Levitan adjusts the transmission duration of files based on the number of users requesting the file. Levitan does not disclose "... multiplexing a plurality of different common software content on the shared communication channel...." Levitan also fails to disclose "dynamically adjusting" the common software content multiplexed on the shared communication channel in proportion to a changing number of the plurality of terminals receiving the plurality of different common software content.

The Examiner's asserted motivation for the putative combination is also misplaced. At col. 4: 12-13 & col. 10: 1-13, Yong teaches dynamically adjusting packet size to achieve priority and bandwidth allocation. The packet size adjustment of Yong however has nothing to do with "... dynamically adjusting the plurality of different common software content multiplexed on the shared communication channel ..." as in Claim 1. The Applicants assert

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that the Examiner has used hindsight in an effort to combine prior art references in a manner that reads on an unreasonably broad interpretation of the claims, which is improper. Claim 1 is thus patentably distinguished over Metz, Young and Levitan.

Arguments re: Tanaka, Yong & Levitan

Rejection Summary

Claims 9-11, 15 and 17 stand rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 6,671,509 (Tanaka) in view of Yong and Levitan. The Examiner admits that Tanaka fails to disclose software content comprising a plurality of files, and dynamically adjusting the software content multiplexed on the shared communication channel by adjusting a number of times each of the plurality of files is transmitted.

Discussion of Claim 9

Yong teaches buffering data from different sources and multiplexing the data for transmission over a communication link. At col. 2, lines 48-67, Yong discusses prioritizing and segmenting multiple bit streams into variable-length packets. At col. 3, lines 1-36, Yong discloses that the packet sizes are based on the fullness of information buffers and the available bit rate of the output channel.

Tanaka generally discloses a mobile communication unit that may be configured to operate according to different types of communication principles, e.g., PHS, PDC, LAN, etc, using system software received from a

base station. The Examiner's references to various passages of Tanaka do not support the asserted rejection. At col. 3, lines 47-51, Tanaka discusses a base station that includes a system software supply means for successively and repeatedly transmitting the system software via a radio link. At col. 4, lines 48-58, Tanaka discusses a base station that transmits system software to a mobile unit over broadcast and control channels corresponding to different modes of operation of the base station. Here, Tanaka multiplexes the transmission of the software over different channels (corresponding to the different modes of operation of the base station). At col. 8, lines 11-61, Tanaka discusses a unidirectional broadcast channel and a traffic channel used to transfer user information between the base station and mobile station. At col. 12, lines 14-28, Tanaka discusses a common access channel (having a frequency associated with a corresponding zone) shared by multiple mobile stations wherein the common control channel includes a BCCH, a CCCH and a UPCH.

Even if Tanaka implemented the multiplexing scheme of Yong, as suggested by the Examiner, Yong does not disclose multiplexing by "… adjusting a number of times each of the plurality of software files is transmitted." At col. 5, lines 7-32, Yong discusses serving buffers with equal priority for a predetermined partition time T_i, wherein the partition time may be shortened if the buffer has no more bits to send or a higher priority buffer is ready to send. Yong also discloses extending the partition time if the buffer has additional bits to send, provided that equal priority buffers have no bits to send. In Yong, only the partition time of the different buffers accommodating different data streams is adjusted.

At col. 3, lines 27-34, Levitan discusses transmitting files over a time period that is proportional to the number of clients requesting the file. At

col. 7, lines 8-28, Levitan discusses continuing the transmission of an unscheduled file for a number of days based on the number of users requesting the file. In other words, Levitan adjusts the transmission duration of files based on the number of users requesting the file. Contrary to the Examiner's assertion, Levitan does not suggest "... dynamically adjusting the software content multiplexed on the shared communication channel by adjusting a number of times each of the plurality of software files is transmitted." Here too, the Examiner has used hindsight in an effort to combine prior art references in a manner that reads on an unreasonably broad interpretation of the claims, which is improper. Claim 9 is thus patentably distinguished over the art.

Prayer For Relief

In view of the discussion above, the Claims of the present application are in condition for allowance. Kindly withdraw any rejections and objections and allow this application to issue as a United States Patent without further delay.

Respectfully submitted,

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